

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:)	
)	
SMASH TECHNOLOGY, a)	
Nevada limited)	
liability company, et)	
al,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:19-CV-00105TC
SMASH SOLUTIONS, a)	
Delaware limited)	
liability company, et)	
al,)	
)	
Defendants.)	
-----)	

BEFORE THE HONORABLE TENA CAMPBELL

February 26, 2019

Status Conference

Appearances of Counsel:

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1 **Salt Lake City, Utah February 26, 2019**

2 *** * * * ***

3 THE COURT: Okay. We are here in Smash
4 Technology and others versus Smash Solutions.

00:00:15 5 Initially we were here for a status on the motion for
6 temporary restraining order and preliminary
7 injunction filed by the plaintiffs. Then I received,
8 I guess it was yesterday, a stipulation for an
9 extension of time that appears to be indefinite.

00:00:39 10 So I'll have to ask you, Mr. Reid, and
11 Ms. Ruedas, did I say that correctly?

12 MS. RUEDAS: Yes, Your Honor. Thank you.

13 THE COURT: And Mr. Barneck for the
14 defendants, what's up and where do we go now?

00:00:55 15 Mr. Reid, since you brought the motion.

16 MR. REID: Yes, Your Honor, thank you. Darren
17 Reid on behalf of the plaintiffs. Um, we filed in
18 state court --

19 THE COURT: I know and that's something else I
00:01:12 20 have got to bring up with you. I don't know that
21 technically you have dotted all of the Is and crossed
22 all of the Ts, but I'll tell you about that in a
23 minute.

24 MR. REID: Fair enough, Your Honor. We filed
00:01:25 25 our complaint and TRO on January 28th in state court

1 and we eventually received a hearing date for
2 February 19th before Judge Davis there. And a couple
3 of days before the hearing date, defendants removed
4 here to this court and we obviously are anxious to
5 move forward with having defendants respond to our
6 complaint and respond to the TRO motion and have a
7 scheduled date with the court.

8 However, we have been informed that the
9 defendant, Mr. Jerry Ulrich, is dealing with some
10 substantial and serious medical issues and I can let
11 defendants elaborate further. And we're certainly
12 sympathetic to that, and so we are willing to let him
13 have some additional time to respond to the complaint
14 and TRO motion and maybe we can discuss some more
15 specifics here about that. Our concern, however, is
16 preserving the status quo during that interim period.

17 THE COURT: So that there is no money taken or
18 what do you see as the status quo?

19 MR. REID: Well, yeah, it's a great question.
20 I think right now we are concerned that Mr. Ulrich
21 has been conducting business under the umbrella of a
22 third entity, we'll call it Smash Innovations, and
23 that he has been raising money pursuant to that
24 entity, that he has potentially been creating
25 liabilities and obligations for our entity, Smash

1 Technology, and that he has potentially been
2 interfering with our intellectual property rights and
3 our agreement with Feracode who has been developing
4 our CRM platform technology. And so I think, and we
00:03:27 5 have discussed some of these issues with counsel, and
6 I said look, I'm willing to propose some terms for a
7 sort of an interim agreement so that we can preserve
8 this status quo. And maybe it's something that even
9 the court can order for the time being. Obviously,
00:03:47 10 I don't want the court being in a position where it
11 is uncomfortable making kind of a pre-TRO type of
12 determination. But that said, that is some of our
13 concerns.

14 Now, if Mr. Ulrich is laid up with the
00:04:03 15 conditions he is dealing with, it's probably unlikely
16 he is going to be doing too much any way, but we do
17 understand that he has been working with some other
18 individuals. And our concern is just essentially
19 that all of this sort of stuff just stop and that
00:04:19 20 everyone just take a big deep breath so that we can
21 determine what everyone's rights are at the
22 appropriate time.

23 So that's kind of where we're at. I had
24 suggested to counsel that perhaps we and of course
00:04:37 25 the court has already asked the parties for a

1 scheduling order and so we're looking through that
2 and going to be preparing something, but my hope is
3 that, you know, we get something at least firm on the
4 court's calendar for a response date. I suggested
5 maybe March 22nd which is --

00:04:54
6 THE COURT: Response to what, the complaint?
7 And I don't see the value of a TRO. I could see a
8 preliminary injunction. Why, why waste time with a
9 TRO?

00:05:07
10 MR. REID: And that that's probably a fair
11 point, Your Honor. You know, so that we basically
12 get -- give them adequate time to get the facts from
13 their clients, respond to the complaint, respond and
14 then we set a time, maybe it's the end of March for a
00:05:22
15 hearing on the issues.

16 In the meantime, I think my client is amenable
17 to trying to make a run at potential settlement.
18 Maybe we get there, maybe we don't, but if we don't,
19 we will have something firm on the court's calendar
00:05:39
20 that, you know, that the defendants can respond to.
21 And I'm obviously sympathetic too. That I understand
22 that they're operating in somewhat of a gray area and
23 maybe they are going to need more time. But if we
24 have some parameters in place, um, preserving the
00:05:55
25 status quo, I think, you know, that's probably

1 something that we can live with.

2 THE COURT: All right. Thank you. To begin
3 with, it's going to be Mr. Barneck, you'll be
4 speaking?

00:06:05 5 MR. BARNECK: Yes, thank you.

6 THE COURT: I would -- I would like you to
7 look, when you get back, we certainly have, I
8 certainly do have subject matter jurisdiction, but
9 there are some niceties about what you have to file
00:06:21 10 to remove. So if you would take a closer look at 28
11 USC Section 1446 and there is sort of a statement, a
12 document, that needs to be filed, okay?

13 MR. BARNECK: I will do that. Thank you, Your
14 Honor.

00:06:35 15 THE COURT: Okay. So what are you thinking
16 there, Mr. Barneck?

17 MR. BARNECK: Well, I think that our view of
18 things is not in terms of status and how we move
19 forward is not far off from what Mr. Reid described.
00:06:57 20 We do have a client who is facing quite serious
21 medical circumstances right now. That's Mr. Ulrich
22 himself who is a named inventor and he is the manager
23 of Smash Solutions. He is not the only one we can
24 get information from so we -- we're not completely
00:07:26 25 limited in that way, but he is -- he is pretty

1 important. And what is happening right now is he has
2 had a leg injury from years ago that has developed an
3 infection and it has become quite severe. And about
4 10 days ago, his foot was amputated. That infection
5 has traveled through his body and last week he was
6 expected to have all of his teeth removed. So it's
7 fairly serious stuff. They were told -- he was told
8 that it would be a good four to six weeks before he
9 would be able to function at any level to where he
10 could work or and support us in this in the defense
11 of this case. So we don't know, that could change,
12 that could be shorter, it could be longer. It will
13 be months before he has a full recovery. So we are
14 willing to do anything and everything that we can but
15 we do -- we do have I think one arm tied behind our
16 backs with his limitations right now.

17 THE COURT: What about the agreement that
18 Mr. Reid suggested that you work out -- that we just
19 maintain the status quo?

20 MR. BARNECK: Well, we think generally that's
21 a good suggestion. We haven't seen details that he
22 is going to propose and we will be happy to look at
23 those.

24 THE COURT: Okay.

25 MR. BARNECK: And we think there is a

1 reasonable possibility that that may work. And if I
2 could answer the question by adding this as well --

3 THE COURT: Sure.

4 MR. BARNECK: -- Your Honor, the way we see
5 the case is it's primarily a dispute over who owns
6 the intellectual property that is now being developed
7 into a commercially marketable software product.

8 THE COURT: Right.

9 MR. BARNECK: My client's say Smash Solutions
10 developed the concept and the build plan for this
11 software long before Mr. Alexander came into the
12 picture and before Smash Technology was ever formed.
13 And that ownership of it was never transferred to the
14 plaintiff. There was a verbal agreement to work
15 toward that, but our position is that the plaintiffs
16 did not fulfill their part of that agreement and the
17 transfer of ownership never -- never took place. And
18 Feracode is now writing the code and building it into
19 what will hopefully be a commercially marketable
20 product. Solutions is paying that contract and our
21 view is that that should continue. Regardless of who
22 prevails in the case, the prevailing party is going
23 to want to have that product as developed as
24 possible. And if we stop paying Feracode, they're
25 going to move to other projects that will

1 substantially delay the development of the software.
2 We don't think that is in anyone's best interest.
3 So, our thought of any kind of agreement or partial
4 resolution would need to include the continuation of
00:10:33 5 the development in that -- in that fashion. So we
6 have had some productive conversations with counsel
7 so far, and we look forward to more of those and the
8 possibility of an agreement like that, with respect
9 to what Mr. Reid proposed to me before we came in the
00:10:53 10 courtroom, March 22nd as a possible deadline.

11 THE COURT: Deadline for what, for filing
12 answers, or filing a response, or reaching a
13 resolution? What did you see that date as being,
14 Mr. Reid?

00:11:07 15 MR. REID: Yeah, I think it was -- I was
16 contemplating filing a response and filing both an
17 answer and a response to the TRO motion, if that is
18 still in the mix, and then scheduling a hearing
19 shortly thereafter. But I think that at the end of
00:11:25 20 the day, I was just trying to afford an opportunity
21 for defendants to gather all of the facts, have the
22 participation of Mr. Ulrich so that they cannot be
23 having their hands tied behind their back and doing
24 all of that work. And so I think that we're fine
00:11:40 25 with some sort of concept like that that they have,

1 you know, an additional few weeks to provide
2 something to the court.

3 THE COURT: Okay. What if I did this? I am
4 going to grant the motion for the extension, since it
00:11:52 5 is stipulated. And then March 22nd, I think, I am
6 out of town, is that right, Ms. Rice?

7 THE CLERK: You will be back by then.

8 THE COURT: Okay. We will have another
9 hearing at 10:00, March 22nd. What day of the week
00:12:15 10 is that?

11 THE CLERK: That is a --

12 MR. REID: It is a Friday.

13 MR. BARNECK: It is a Friday, I believe.

14 THE COURT: Friday. And whether there is a --
00:12:24 15 I am not going to order that there be answers or
16 responses because by then I would direct that you
17 have met and conferred and tried to settle this some
18 way short of injunctive relief. So all it will be
19 will be a status, but I will expect that for the
00:12:48 20 status you can report some progress in negotiations
21 or how you want to proceed.

22 MR. REID: That sounds -- that sounds good to
23 me, Your Honor.

24 MR. BARNECK: Yes, very helpful. Yes, thank
00:13:01 25 you.

1 MR. REID: And I explained to counsel today
2 that I expect to have a letter with formal terms sent
3 to him today so we should hopefully have made really
4 good progress before then.

00:13:11

5 THE COURT: Okay. So we'll just meet -- I am
6 going to not reach any sort of decision on the
7 injunctive relief because it seems like the TRO would
8 be moot. So I am going to deny that as moot, but
9 that does not mean that a preliminary injunction
10 might not be in the future. But we'll just see what
11 happens on March 22nd.

00:13:29

12 MR. BARNECK: Thank you. And I hope to have a
13 better forecast of my own client's health.

00:13:44

14 THE COURT: I imagine this is about the last
15 thing he is thinking of with an amputated foot and a
16 loss of his teeth. He is probably just trying to
17 stay alive.

18 MR. BARNECK: Yeah. Yeah, I think so.

19 THE COURT: All right. Thank you.

00:13:54

20 MR. BARNECK: Thank you.

21 THE CLERK: That will be 10:00 a.m.

22 THE COURT: 10:00 a.m. on March 22nd. Okay.

23 MR. BARNECK: Sorry. 10:00 a.m. March 22nd.

24 THE COURT: Thank you.

00:14:02

25 MR. REID: Great. Thank you.

1 (Whereupon, the hearing concluded at
2 10:52 a.m.)
3

4 **REPORTER'S CERTIFICATE**
5

6 I, Laura W. Robinson, Certified Shorthand
7 Reporter, Registered Professional Reporter and Notary
8 Public within and for the County of Salt Lake, State
9 of Utah, do hereby certify:

10 That the foregoing proceedings were taken
11 before me at the time and place set forth herein and
12 were taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 That the foregoing pages contain a true and
16 correct transcription of my said shorthand notes so
17 taken.

18 In witness whereof I have subscribed my name
19 this 11th day of March, 2019.
20

21 _____
22 Laura W. Robinson
23 RPR, FCRR, CSR, CP
24
25